

JUN 18 2008

**Board of Vocational Nursing
and Psychiatric Technicians**

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**BEFORE THE
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. VN-2005-1809

DIANNA LYNN SMITH
1245 E. 17th Street
Long Beach, CA 90813

A C C U S A T I O N

Vocational Nurse License No. VN 212985

Respondent.

Complainant alleges:

PARTIES

1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this
Accusation solely in her official capacity as the Executive Officer of the Board of Vocational
Nursing and Psychiatric Technicians, Department of Consumer Affairs.

2. On or about January 18, 2005, the Board of Vocational Nursing and
Psychiatric Technicians issued Vocational Nurse License Number VN 212985 to Dianna Lynn
Smith (Respondent). The Vocational Nurse License was in full force and effect at all times
relevant to the charges brought herein and will expire on June 30, 2010, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Vocational Nursing and Psychiatric Technicians (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

STATUTORY PROVISIONS

4. Section 2875 of the Business and Professions Code (Code) provides, in pertinent part, that the Board may discipline the holder of a vocational nurse license for any reason provided in Article 3 (commencing with section 2875) of the Vocational Nursing Practice Act.

5. Section 118(b) of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated. Under section 2892.1 of the Code, the Board may renew an expired license at any time within four years after the expiration.

6. Section 490 of the Code provides, in pertinent part, that the Board may suspend or revoke a license when it finds that the licensee has been convicted of a crime substantially related to the qualifications, functions or duties of a licensed vocational nurse.

7. Section 493 of the Code states:

“Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question. . . .”

1 8. Section 2878 of the Code states, in part:

2 "The Board may suspend or revoke a license issued under this chapter [the
3 Vocational Nursing Practice Act (Bus. & Prof. Code, 2840, et seq.)] for any of the following:

4 "(a) Unprofessional conduct, which includes, but is not limited to, the following:

5 ...

6 "(d) Violating or attempting to violate, directly or indirectly, or assisting in or
7 abetting the violating of, or conspiring to violate any provision or term of this chapter.

8 ...

9 "(f) Conviction of a crime substantially related to the qualifications, functions,
10 and duties of a licensed vocational nurse, in which event the record of the conviction shall be
11 conclusive evidence of the conviction. . . ."

12 9. Section 2878.5 of the Code states, in pertinent part:

13 In addition to other acts constituting unprofessional conduct within the meaning
14 of this chapter [the Vocational Nursing Practice Act] it is unprofessional conduct for a person
15 licensed under this chapter to do any of the following:

16 ...

17 "(b) Use any controlled substance as defined in Division 10 of the Health and
18 Safety Code, or any dangerous drug as defined in Section 4022, or alcoholic beverages, to an
19 extent or in a manner dangerous or injurious to himself or herself, any other person, or the public,
20 or to the extent that the use impairs his or her ability to conduct with safety to the public the
21 practice authorized by his or her license.

22 "(c) Be convicted of a criminal offense involving possession of any narcotic or
23 dangerous drug, or the prescription, consumption, or self-administration of any of the substances
24 described in subdivisions (a) and (b) of this section, in which event the record of the conviction is
25 conclusive evidence thereof. . . ."

26 10. Section 2878.6 of the Code states:

27 "A plea or verdict of guilty or a conviction following a plea of nolo contendere
28 made to a charge substantially related to the qualifications, functions and duties of a licensed

1 vocational nurse is deemed to be a conviction within the meaning of this article. The board may
2 order the license suspended or revoked, or may decline to issue a license, when the time for
3 appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order
4 granting probation is made suspending the imposition of sentence, irrespective of a subsequent
5 order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw
6 his plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
7 dismissing the accusation, information or indictment.”

8 11. California Code of Regulations, title 16, section 2521, states, in part:

9 “For the purposes of denial, suspension, or revocation of a license pursuant to
10 Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or
11 act shall be considered to be substantially related to the qualifications, functions or duties of a
12 licensed vocational nurse if to a substantial degree it evidences present or potential unfitness of a
13 licensed vocational nurse to perform the functions authorized by his license in a manner
14 consistent with the public health, safety, or welfare. . . .”

15 **COST RECOVERY**

16 12. Section 125.3 of the Code provides, in pertinent part, that the Board may
17 request the administrative law judge to direct a licentiate found to have committed a violation or
18 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
19 and enforcement of the case.

20 **FIRST CAUSE FOR DISCIPLINE**

21 **(Conviction of Substantially Related Crimes)**

22 13. Respondent is subject to disciplinary action under sections 490 and 2878,
23 subdivisions (d) and (f), as defined by California Code of Regulations, title 16, section 2521, in
24 that Respondent was convicted of crimes substantially related to the qualifications, functions, or
25 duties of a licensed vocational nurse. The circumstances are as follows:

26 a. On or about June 6, 2006, in a criminal proceeding entitled *The People of*
27 *the State of California v. Dianna Lynn Smith* in Los Angeles Superior Court, Case No.
28 6LT00483, Respondent was convicted on her plea of nolo contendere for misdemeanor violations

1 of Vehicle Code section 23152, subdivision (b) (driving under the influence while having .08%
2 or greater of alcohol in her blood) and Vehicle Code section 20002, subdivision (a)(1) (hit and
3 run). Respondent was placed on summary probation with terms and conditions, including
4 restitution to the victim of the automobile accident and participation and completion of a three
5 month first offender alcohol education and counseling program.

6 b. The circumstances of the above convictions are that, shortly after midnight
7 on March 5, 2006, Long Beach Police officers received a call of a non-injury traffic collision.
8 When officers arrived at the scene, Respondent was attempting to flee, but unable to do so
9 because of damage to her vehicle. Officers ordered Respondent to exit her vehicle and, when she
10 did so, the officer smelled the odor of alcoholic beverages. Following a series of field sobriety
11 tests, the officer formed the opinion that Respondent could not safely operate her vehicle because
12 she was under the influence of alcohol. Respondent's blood alcohol level was .18%.

13 **SECOND CAUSE FOR DISCIPLINE**

14 **(Use of Alcohol in a Manner Dangerous or Injurious to Oneself or Others)**

15 14. Respondent is subject to disciplinary action under Section 2878,
16 subdivision (a), on the grounds of unprofessional conduct as defined in Section 2878.5,
17 subdivisions (b) and (c), in that on or about June 6, 2006, Respondent was convicted of crimes
18 involving use and consumption of an alcoholic beverage in a manner dangerous to herself or
19 others, as more fully described above in paragraph 13 (a) and (b).

20 **DISCIPLINE CONSIDERATIONS**

21 15. To determine the degree of discipline, if any, to be imposed on
22 Respondent, Complainant alleges that on or about December 9, 2004, the Board reviewed
23 Respondent's prior conviction history (*i.e.*, 1990, convicted of fight in public place in violation
24 of Penal Code section 415(1); 1987, convicted of disorderly conduct: prostitution in violation of
25 Penal Code section 647 (B); 1987, convicted of possession of cocaine pipe in violation of Health
26 and Safety Code section 11364; and 1986, two separate convictions of disorderly conduct:
27 prostitution in violation of Penal Code section 647 (B)) and approved her vocational nurse
28 license application for issuance with a warning that, "Future substantiated reports that you have

1 engaged in similar behavior or otherwise violated the law or regulations governing your practice
2 as a vocational nurse may result in disciplinary action against your license.”

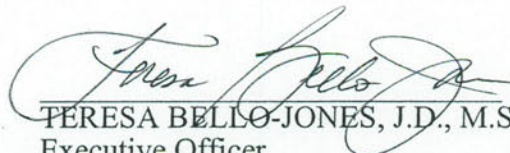
3 **PRAYER**

4 WHEREFORE, Complainant requests that a hearing be held on the matters herein
5 alleged, and that following the hearing, the Board of Vocational Nursing and Psychiatric
6 Technicians issue a decision:

- 7 1. Revoking or suspending Vocational Nurse License Number VN 212985,
8 issued to Dianna Lynn Smith.
- 9 2. Ordering Dianna Lynn Smith to pay the Board of Vocational Nursing and
10 Psychiatric Technicians the reasonable costs of the investigation and enforcement of this case,
11 pursuant to Business and Professions Code section 125.3;
- 12 3. Taking such other and further action as deemed necessary and proper.
- 13

14 DATED: June 18, 2008.

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17 TERESA BELLO-JONES, J.D., M.S.N., R.N.
18 Executive Officer
19 Board of Vocational Nursing and Psychiatric Technicians
20 Department of Consumer Affairs
21 State of California
22 Complainant

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